McLennan v. *Prentice,* 85 Wis. 427, holds that when the grantee has been put into possession a breach of the covenant of seisin entitles him only to nominal damages unless evicted.

CRIMINAL LAW—INTENT PRESUMED FROM NATURAL RESULT OF ACT IS REBUTTABLE.—Defendant was convicted under Espionage Act for utterances made in a public speech; he not only denied making the statements alleged but specifically denied that he ever entertained any intent to obstruct the recruiting service or to attempt to cause insubordination, disloyalty, mutiny and refusal of duty in the military or naval forces—which specific intent was apparently necessary to conviction in the present action. The proof of the prosecution rested mainly upon the words themselves, coupled with their utterance to a crowd of people, and their natural and probable effect upon such auditors. *Held,* under such circumstances, an instruction that a man cannot say that he did not intend to do a certain thing when such thing was the natural result of his act, erroneous. *Bental* v. *U. S.* (C. C. A., 8th Cir., 1919), 262 Fed. 744.

This case admits the general principle so often laid down that where one knowingly does an act (including utterance of words), the presumption arises that he intended the results which would naturally follow. See *Reynolds* v. *U. S.,* 98 U. S. 145; *U. S.* v. *Breese,* 173 Fed. 402; *U. S.* v. *McClare,* 26 Fed. Cas. No. 15659. But further says that where the act must be "knowingly and willfully" done, as here, this presumption, while constituting strong evidence, is not conclusive but rebuttable; citing *Hicks* v. *U. S.,* 150 U. S. 447; and the testimony of defendant that he intended no such result may be so received in rebuttal thereof. Above instruction was held erroneous because it practically negatived such testimony on his part. See on this point 1 WHARTON ON CRIM. EVI. [10th Ed.], § 431. There was a dissent in this case, proceeding on the ground that this instruction constituted merely the opinion of the court on the weight of the evidence, as permissible in Federal practice; see *Freese* v. *Kemplay,* 118 Fed. 428; further, that as such opinion it was obviously true, and the jury being cautioned that they were the exclusive judges of all questions of fact and were not to be governed by any expressions of the court, that thus there was no error in the instruction. Also that for the jury really to give any effect to the defendant's testimony under the circumstances of this case would make such criminal prosecution a farce. If, in form, the instruction here did constitute merely a comment on the weight of the evidence, probably this dissent is correct. So far as can be ascertained from the report, however, it is given in the ordinary form of an instruction. As such it practically excludes from the consideration of the jury all testimony of the defendant as to his intention, and would seem on this ground to be erroneous. See 1 WHARTON, CRIM. EVI. [10th Ed.], § 431, which, speaking of testimony of a defendant as to his intent, is as follows: "While such answers are not conclusive, they cannot be ignored, but must be considered in connection with all the other evidence in the case. Where an instruction requires the jury to ignore such statements it is error."

See also *People* v. *Sweeney,* 55 Mich., 586, "where the intent is the gist of the crime, the presumption (of intending the natural consequences of one's acts), though a very important circumstance, is not conclusive nor alone sufficient." But, on the other hand, for a case apparently holding such constructive intent to be alone sufficient, see *Abrams* v. *U. S.,* 40 Sup. Ct. Rep. 17, and note on same in 18 MICH. L. REV. 236. It would certainly seem, however, that since the almost universal condemnation of the suggested rule of disqualification of one from testifying to his own intent (see 1 WIGMORE ON EVI., § 581), if this result is not to be in effect nullified, a court should not be allowed to instruct the jury to disregard such testimony. It would seem more logical that all the evidence bearing on the question of intent, including the presumption discussed in the principal case and the defendant's own testimony, should be left wholly to the consideration of the jury, with such cautions or comments by the court as the particular practice and the circumstances of the case would permit of. See *Oakes* v. *State,* 98 Miss. 97.

DIVORCE—ALIMONY—ALLOWANCE BASED ON FUTURE EARNINGS.—In a divorce proceeding permanent alimony was awarded the wife on the authority of a statute providing, "When a divorce shall be granted * * * the wife shall be * * * allowed such alimony as the court shall think reasonable," etc. The allowance was such that it obviously was based upon earning capacity, and the husband appealed on the ground that the statute did not authorize such judgment. *Held,* the statute did not prevent alimony awarded on such basis. *Nixon* v. *Nixon* (Kans., 1920), 188 Pac. 227.

A similar conclusion on a statute very much like the one in Kansas was reached in *Lape* v. *Lape* (Ohio, 1919), 124 N. E. 51. For discussion thereof, see 18 MICH. L. REV. 60. It may very well be that such statutes grew in the first instance out of a desire for a wider power in the court in awarding alimony, it being generally considered that in absence of statutory authorization courts were without power to set off a particular portion of the husband's property. However, in *Cizek* v. *Cizek,* 69 Neb. 797, it was held that under a statute providing that "the court may further decree to her (the wife) such part of the personal estate of the husband and such alimony out of his estate as it shall deem just and reasonable," etc., a decree directing the husband to deed certain lots to the wife was beyond the court's power. See, too, *Bacon* v. *Bacon,* 43 Wis. 203. After the decision in *Wilson* v. *Wilson,* 67 Minn. 448, which is *contra* to the principal case, the statute was amended. *Haskell* v. *Haskell,* 119 Minn. 484, was decided after the amendment.

EMINENT DOMAIN—BENEFITS WHICH MAY BE SET OFF AGAINST DAMAGES.—Appellant condemned land for right of way over defendant's property. Respondents were allowed damages for value of land taken. On appeal to the District Court, respondents were awarded substantial damages for severance. On appeal to the Supreme Court, appellants contended for the right to set off the increased value of respondents' land and benefits thereto by reason of the building and maintenance of the road, depot and side-tracks partially on the land of one of the respondents. *Held,* general benefits such